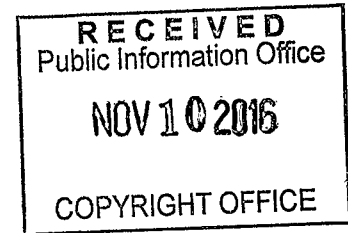


Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.



In the Matter of)
)
Distribution of the 2004, 2005, 2006)
2007, 2008 and 2009)
Cable Royalty Funds)
_____)

Docket No. 2012-6 CRB CD 2004-2009
(Phase II)

Received

Nov 10 2016

Copyright Royalty Board

In the Matter of)
)
Distribution of the 1999-2009)
Satellite Royalty Funds)
_____)

Docket No. 2012-7 CRB SD 1999-2009
(Phase II)

**JOINT REPLY TO IPG OPPOSITION TO MOTION TO ADMONISH IPG
FOR FAILURE TO SERVE MPAA AND SDC**

On November 4, 2016, Independent Producers Group ("IPG") filed its Opposition To Joint Motion To Admonish IPG For Failure To Serve MPAA And SDC ("Opposition"). In the Opposition, IPG devotes three pages to the argument (presented without *any* declaration from counsel) that IPG's records suggest that electronic service of IPG's Fourth Motion For Modification ("IPG Motion") was effected on September 15, 2016. IPG then devotes an additional six pages to an untimely collateral attack on the Register of Copyrights' ("Register") Order in Docket Nos. 2001-8 CARP CD 98-99, et al., (June 26, 2006) ("June 26, 2006 Order"). As explained herein, IPG has not presented any evidence or arguments that would support an inference that IPG actually served MPAA and SDC with a copy of the IPG Motion in the manner required by the Copyright Royalty Judges' ("Judges") regulations. Accordingly, the Judges

should admonish IPG for once again failing to follow the regulations governing service. MPAA and SDC also seek any other relief the Judges deem appropriate.

ARGUMENT

The Judges' regulations are very clear about how pleadings should be served. Section 3050.4(h) provides as follows:

Service method. During the course of a proceeding, each party must serve all motions, objections, oppositions, and replies on the other parties or their counsel by means no slower than overnight express mail on the same day the pleading is filed. If a party is willing to accept service of a document electronically (i.e., by e-mail), followed by a hard copy, first-class mail of the hard copy may be used in lieu of express mail or other expedited delivery.

37 C.F.R. § 350.4(h). The regulation clearly requires all parties to either (1) serve copies of pleadings on opposing counsel by means no slower than overnight express mail on the same day a pleading is filed, or (2) *if* opposing counsel has consented to receive electronic service, serve a copy of the filing to opposing counsel over email, followed by a hard-copy sent by first class U.S. mail. IPG plainly failed to follow this regulation.

As set forth in the declarations from counsel for MPAA and SDC attached to the parties' Joint Motion, neither MPAA nor SDC received a service copy of the IPG Motion *at all*. See Joint Motion at 2-3 and Exhibits 1-2. Attached to the Opposition is a copy of an email to which IPG claims the IPG Motion was attached, and which IPG "believed" it sent to opposing counsel. However, it cannot be mere coincidence that *none* of the five counsel for MPAA and SDC received the IPG Motion. There is not even a suggestion in the Opposition that counsel for IPG confirmed from his "Sent" folder that the email he purports to say was sent, was indeed delivered to opposing counsel. Moreover, even if the Judges were inclined to accept IPG's purported proof that a copy of the IPG Motion was sent to counsel for MPAA and SDC over email on

September 15, 2016, that email, alone, still failed to satisfy the Judges' regulations, which also required IPG to simultaneously send a hard copy of the IPG Motion to MPAA and SDC on the same day the pleading was filed. *See* 37 C.F.R. § 350.4(h). IPG was aware that the regulations required a hard copy to be simultaneously mailed to the parties because counsel for MPAA reminded IPG's counsel of this over email in June 2014, when the parties agreed to accept electronic service in these proceedings. *See* Exhibit 1, Declaration of Lucy Holmes Plovnick ("Plovnick Declaration") at ¶ 3, and Exhibit A. IPG's counsel, Brian Boydston, confirmed on June 27, 2014 that he understood and agreed that service in these proceedings would be effected by electronic mail, followed by a hard copy sent by U.S. mail (as set forth in the Judges' regulations). *See id.* at ¶ 3 and Exhibit A. However, notwithstanding both the regulations and the parties' email agreement, IPG still failed to serve both MPAA and SDC with a copy of the IPG Motion *at all*. IPG's conduct is improper, and should not be permitted by the Judges.

IPG's collateral attack on the June 26, 2006 Order also falls flat. As IPG knows, IPG's arguments were already considered and rejected by the Register in the course of ruling on IPG's motion seeking reconsideration of the June 26, 2006 Order. *See*, Order, Docket Nos. 2001-8 CARP CD 98-99, et al., (April 3, 2007); Plovnick Declaration at ¶ 4 and Exhibit B. The Judges should not permit IPG to seek reconsideration of the June 26, 2006 Order once again in the context of the Opposition.

CONCLUSION

For all of the foregoing reasons, the Judges should grant MPAA and SDC's motion, and formally admonish IPG for its failure to serve MPAA and SDC, as required by the Judges' regulations. MPAA and SDC also seek any other relief the Judges deem appropriate.

Respectfully submitted,

**MPAA-REPRESENTED PROGRAM
SUPPLIERS**

Lucy Holmes Plovnick

Gregory O. Olaniran
D.C. Bar No. 455784
Lucy Holmes Plovnick
D.C. Bar No. 488752
Alesha M. Dominique
D.C. Bar No. 990311
MITCHELL SILBERBERG & KNUPP LLP
1818 N Street N.W.
8th Floor
Washington, D.C. 20036
Telephone: (202) 355-7817
Fax: (202) 355-7887
goo@msk.com
lhp@msk.com
amd@msk.com

SETTLING DEVOTIONAL CLAIMANTS

Matthew J. MacLean / *LHP*

Clifford M. Harrington
D.C. Bar No. 218107
Matthew J. MacLean
D.C. Bar No. 479257
Victoria N. Lynch-Draper
D.C. Bar No. 1001445
PILLSBURY WINTHROP
SHAW PITTMAN LLP
1200 Seventeenth Street NW
Washington, DC 20036
Telephone: (202) 663-8525
Facsimile: (202) 663-8007
Clifford.Harrington@PillsburyLaw.com

Dated: November 10, 2016

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of November, 2016, a copy of the foregoing pleading was sent by Federal Express overnight mail to the party listed below.

Brian D. Boydston
PICK & BOYDSTON LLP
10786 Le Conte Avenue
Los Angeles, CA 90024

Lucy Holmes Plovnick
Lucy Holmes Plovnick

EXHIBIT 1

**Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.**

<hr/>)	
In the Matter of)	
)	
Distribution of the 2004, 2005, 2006)	Docket No. 2012-6 CRB CD 2004-2009
2007, 2008 and 2009)	(Phase II)
Cable Royalty Funds)	
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In the Matter of)	
)	
Distribution of the 1999-2009)	Docket No. 2012-7 CRB SD 1999-2009
Satellite Royalty Funds)	(Phase II)
<hr/>)	

DECLARATION OF LUCY HOLMES PLOVNICK

I, Lucy Holmes Plovnick, declare:

1. I am over 18 years of age and an attorney at law duly licensed to practice law in Rhode Island, Massachusetts, and the District of Columbia. I am a partner in the law firm of Mitchell Silberberg & Knupp LLC, attorneys of record for Motion Picture Association of America, Inc. ("MPAA") and other program suppliers who have agreed to representation by MPAA in the captioned proceedings.
2. I have personal knowledge of the following facts and, if called and sworn as a witness, could and would competently testify thereto.
3. Attached hereto as Exhibit A is a true and correct copy of email correspondence between myself, Brian Boydston, counsel for Independent Producers Group ("IPG"), Matthew J. MacLean, counsel for the Settling Devotional Claimants ("SDC"), and Stephen K. Marsh, then counsel for the Joint Sports Claimants ("JSC"), (dated June 17-18, 20, 22, 23, 26, and 27, 2014).

4. Attached hereto as Exhibit B is a true and correct copy of the Order issued by the Register of Copyrights in Docket Nos. 2001-8 CARP CD 98-99, et al., (April 3, 2007).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 10th day of November, 2016, at Washington, D.C.

Lucy Holmes Plovnick
Lucy Holmes Plovnick

EXHIBIT A

Plovnick, Lucy

From: Brian D. Boydston, Esq. <brianb@ix.netcom.com>
Sent: Friday, June 27, 2014 1:36 PM
To: Plovnick, Lucy; 'MacLean, Matthew J.'; 'Marsh, Stephen K.'; Olaniran, Greg; Harrington, Clifford M.; Lynch, Victoria N.; Garrett, Robert; Wood, Bob; Nguyen, Kimberly; Straus, Naomi
Subject: RE: Service Issues

That is my understanding as well.

Brian

-----Original Message-----

From: "Plovnick, Lucy"
Sent: Jun 26, 2014 3:01 PM
To: "'MacLean, Matthew J.'", "'Marsh, Stephen K.'", "Brian D. Boydston, Esq.", "Olaniran, Greg", "Harrington, Clifford M.", "Lynch, Victoria N.", "Garrett, Robert", "Wood, Bob", "Nguyen, Kimberly", "Straus, Naomi"
Subject: RE: Service Issues

That is my understanding based on these emails (that we all consented to electronic service with a paper copy to follow via U.S. mail). Let me know if anyone has a different understanding.

Lucy

From: MacLean, Matthew J. [mailto:matthew.maclea@pillsburylaw.com]
Sent: Thursday, June 26, 2014 5:46 PM
To: Plovnick, Lucy; 'Marsh, Stephen K.'; Brian D. Boydston, Esq.; Olaniran, Greg; Harrington, Clifford M.; Lynch, Victoria N.; Garrett, Robert; Wood, Bob; Nguyen, Kimberly; Straus, Naomi
Subject: RE: Service Issues

Have we reached an agreement on this? It looks like everybody agrees to service electronically, followed up by regular mail.

Please serve electronically on me and Cliff Harrington at the email addresses above (if you insist on serving on only two addresses per party). We would also appreciate it if you would serve Victoria Lynch at the address above as a courtesy.

Matthew J. MacLean | Partner
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, NW | Washington, DC 20037-1122
t 202.663.8183
matthew.maclea@pillsburylaw.com | website bio
[Image]
[Pillsbury Law]

From: Plovnick, Lucy [mailto:lh@msk.com]
Sent: Monday, June 23, 2014 2:19 PM
To: 'Marsh, Stephen K.'; Brian D. Boydston, Esq.; MacLean, Matthew J.; Olaniran, Greg; Harrington, Clifford M.; Lynch, Victoria N.; Garrett, Robert; Wood, Bob; Nguyen, Kimberly; Straus, Naomi
Subject: RE: Service Issues

We also agree with JSC that the burden of including multiple email addresses is minimal. However, to move things along, MPAA will also consent to electronic service being provided to two email addresses, with a hard copy to follow by first class US mail. Please send MPAA's electronic copies to Greg Olaniran and myself.

Lucy

From: Marsh, Stephen K. [mailto:Stephen.Marsh@aporter.com]
Sent: Monday, June 23, 2014 2:04 PM
To: Brian D. Boydston, Esq.; MacLean, Matthew J.; Plovnick, Lucy; Olaniran, Greg; Harrington, Clifford M.; Lynch, Victoria N.; Garrett, Robert; Wood, Bob; Nguyen, Kimberly; Straus, Naomi
Subject: RE: Service Issues

I think it is very reasonable to designate a list of people to whom you would like to receive electronic service given the minimal amount of time involved, particularly when it is relatively easy to create recipient lists. Nonetheless, we are not going to hold up an agreement on that basis, so if we need to limit it to two people, so be it.

From: Brian D. Boydston, Esq. [mailto:brianb@ix.netcom.com]
Sent: Sunday, June 22, 2014 11:22 AM
To: MacLean, Matthew J.; Plovnick, Lucy; Marsh, Stephen K.; Olaniran, Greg; Harrington, Clifford M.; Lynch, Victoria N.; Garrett, Robert; Wood, Bob; Nguyen, Kimberly; Straus, Naomi
Subject: RE: Service Issues

Hello all, my observations are as follows.

First, I cannot imagine that there will be a case where a filing will be so large that it cannot be transmitted electronically, so while I have no problem with Lucy's #2 below, I doubt that it would actually apply to any circumstance. In any event, Lucy is basically just saying to resort to the status quo if electronic transmittal is not possible.

Second, as to the long list of cc:s, let's be reasonable and cap this at two persons. Everyone can cc: internally, but by my count we already have ten parties (not including IPG or its alternate email) that are a "condition" of the agreement. Everyone can cc: internally and, obviously, if a hard copy were sent it is only going to one person. Can everyone live with just having two email addresses identified? This was supposed to simplify things.

Brian

-----Original Message-----

From: "MacLean, Matthew J."
Sent: Jun 20, 2014 3:40 PM
To: "Plovnick, Lucy" , "Brian D. Boydston, Esq." , "Marsh, Stephen K." , "Olaniran, Greg" , "Harrington, Clifford M." , "Lynch, Victoria N." , "Garrett, Robert" , "Wood, Bob" , "Nguyen, Kimberly" , "Straus, Naomi"
Subject: RE: Service Issues

Fine with us.

Matthew J. MacLean | Partner
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, NW | Washington, DC 20037-1122
t 202.663.8183
matthew.maclea@pillsburylaw.com | website bio
[Image]
[Pillsbury Law]

From: Plovnick, Lucy [mailto:lh@msk.com]
Sent: Friday, June 20, 2014 6:36 PM
To: 'Brian D. Boydston, Esq.'; MacLean, Matthew J.; Marsh, Stephen K.; Olaniran, Greg; Harrington, Clifford M.; Lynch, Victoria N.; Garrett, Robert; Wood, Bob; Nguyen, Kimberly; Straus, Naomi
Subject: RE: Service Issues

This is what the Judges' regulations say regarding this issue:

350.4(h) Service method. During the course of a proceeding, each party must serve all motions, objections, oppositions, and replies on the other parties or their counsel by means no slower than overnight express mail on the same day the pleading is filed. If a party is willing to accept service of a document electronically (i.e., by e-mail), followed by a hard copy, first-class mail of the hard copy may be used in lieu of express mail or other expedited delivery.

In light of this language, it does not look like electronic service, by itself, is an option without some sort of approval from the Judges.

MPAA is willing to consent to electronic service, followed by U.S. mail, under the conditions proposed by JSC. MPAA would also another couple of conditions:

1. All parties must serve signed PDF copies of the document in the condition in which it was filed with the Judges (i.e., including exhibits and attachments) on the day of filing.
2. If a pleading (including exhibits or attachments) is too voluminous to send over email (or bounces back after an attempt is made to send it over email), the party must either find a way to transmit the file electronically (via FTP, for example), or send a service copy of the whole filing via overnight mail with notice to the other parties that the overnight mail option has been utilized due to the size of the document).
3. Electronic service for MPAA needs to be sent to Greg Olaniran, Kim Nguyen, Naomi Straus, and myself (all are copied on this message).

If these conditions (and JSC's conditions) are acceptable to all parties, then MPAA will consent to electronic service, followed by US mail.

Lucy

From: Brian D. Boydston, Esq. [mailto:brianb@ix.netcom.com]
Sent: Friday, June 20, 2014 6:14 PM
To: MacLean, Matthew J.; Marsh, Stephen K.; Olaniran, Greg; Plovnick, Lucy; Harrington, Clifford M.;
Lynch, Victoria N.; Garrett, Robert; Wood, Bob
Subject: RE: Service Issues

I agree. What is the point of mailing stuff?

Brian

-----Original Message-----

From: "MacLean, Matthew J."
Sent: Jun 20, 2014 3:11 PM
To: "Marsh, Stephen K." , "brianb@ix.netcom.com" , "goo@msk.com" , "lhp@msk.com" , "Harrington, Clifford M." , "Lynch, Victoria N." , "Garrett, Robert" , "Wood, Bob"
Subject: RE: Service Issues

The SDC would be willing to dispense with the requirement of service by first-class mail if all parties agreed. But if that is not agreeable to all parties, then we are fine with Steve's approach as well.

Matthew J. MacLean | Pillsbury Winthrop Shaw Pittman LLP

Tel: 202.663.8183 | Fax: 202.663.8007
2300 N Street, NW | Washington, DC 20037-1122

Email: matthew.maclea@pillsburylaw.com

Bio: www.pillsburylaw.com/matthew.maclean
www.pillsburylaw.com

-----Original Message-----

From: Marsh, Stephen K. [mailto:Stephen.Marsh@aporter.com]
Sent: Friday, June 20, 2014 6:07 PM
To: MacLean, Matthew J.; 'brianb@ix.netcom.com'; 'goo@msk.com'; 'lhp@msk.com'; Harrington, Clifford M.; Lynch, Victoria N.; Garrett, Robert; Wood, Bob
Subject: RE: Service Issues

JSC also agrees to electronic service, with a few conditions:

1. The regulations require that where the parties consent to electronic service, that service be followed with service by first class mail. First class mail is preferable to the expense associated with overnight delivery, but any electronic service must be provided in addition to first class mail.
2. If we are exchanging documents electronically, there is no reason for waiting a day to send the documents. Any documents filed on a particular day should be electronically served by 8 pm ET on the same day of the filing.
3. For JSC, electronic service needs to be made to Robert Garrett, Stephen Marsh, and James R. ("Bob") Wood at the addresses above, and any other persons they subsequently designate.

If the parties are amenable to these conditions, we will accept electronic service going forward.

Steve Marsh

-----Original Message-----

From: MacLean, Matthew J. [mailto:matthew.maclean@pillsburylaw.com]
Sent: Wednesday, June 18, 2014 12:27 PM
To: 'brianb@ix.netcom.com'; 'goo@msk.com'; 'lhp@msk.com'; Harrington, Clifford M.; Lynch, Victoria N.; Marsh, Stephen K.; Garrett, Robert
Subject: Re: Service Issues

Brian,

The SDC will agree to electronic service provided that MPAA and Sports also agree, and provided that all documents are served electronically on me, Cliff Harrington, and Victoria Lynch at the email addresses above.

Matt

----- Original Message -----

From: Brian D. Boydston, Esq. [mailto:brianb@ix.netcom.com]
Sent: Tuesday, June 17, 2014 02:46 PM Central Standard Time
To: goo@msk.com ; lhp@msk.com ; Harrington, Clifford M.; MacLean, Matthew J.; Lynch, Victoria N.; Stephen.Marsh@aporter.com ; robert.garrett@aporter.com
Cc: worldwidesg@aol.com
Subject: Service Issues

Does anyone have any interest in agreeing amongst ourselves that we can serve motions, oppositions etc. electronically.

Not that I want to bankrupt the Postal Service, but we are exchanging so much electronically anyways, I thought I'd throw it out there.

Brian

In compliance with IRS and other applicable tax practice standards, any advice in this message (including attachments) is not intended or written to be used, and it cannot be used, for the purpose of avoiding tax penalties or for the purpose of promoting, marketing or recommending to another party any tax-related matters.

Additionally, the contents of this message, together with any attachments, are intended only for the use of the individual or entity to which they are addressed and may contain information that is legally privileged, confidential and exempt from disclosure. If you are not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this message, or any attachment, is strictly prohibited. If you have received this message in error, please notify the original sender or the Pillsbury Winthrop Shaw Pittman Help Desk at Tel: 800-477-0770, Option 1, immediately by telephone or by return E-mail and delete this message, along with any attachments, from your computer. Thank you.

EXHIBIT B



United States Copyright Office

Library of Congress • 101 Independence Avenue SE • Washington, DC 20559-6000 • www.copyright.gov

4-3-07

In the Matter of

Distribution of the 1998-2002 Cable
Royalty Funds

and

Distribution of the 1996-2000 Satellite
Royalty Funds

Docket Nos.

2001-8 CARP CD 98-99

2002-8 CARP CD 2000

2003-2 CARP CD 2001

2004-5 CARP CD 2002

Docket Nos.

2000-7 CARP SD 96-98

2001-5 CARP SD 1999

2001-7 CARP SD 2000

ORDER

On June 26, 2006, the Copyright Office issued an Order in the above-captioned proceedings¹ denying, in pertinent part, the motion of the Independent Producers Group ("IPG") to accept its late-filed Response to the September Orders² ("Response"). The Office based its decision on what it found to be a pattern of IPG's failure to comply with the rules governing the Copyright Arbitration Royalty Panel ("CARP") process, especially with regard to service of filings on other parties.³

On July 17, 2006, the Office received from IPG a motion seeking reconsideration of the Office's June 26 Order, arguing that the denial was based on "mistatements (sic) and mischaracterizations" contained therein. On July 21, 2006, the Office issued an Order setting forth the pleading cycle for this motion and instructing the parties on the proper way to file and

¹ The caption of the June 26 Order did not reference Docket No. 2000-7 CARP SD 96-98 as that proceeding is closed. The Office has made a final distribution of those funds. See, Order in Docket No. 2000-7 CARP SD 96-98 (dated January 12, 2006). Although the June 26 Order did include Docket No. 2001-5 CARP SD 99 in its caption, that proceeding also is closed as the Office determined that no further distribution of those funds would be made. See Order in Docket No. 2001-5 CARP SD 99 (dated June 26, 2006).

² In September 2005, the Office issued Orders in each of the above-captioned proceedings establishing a negotiation period and requesting from the parties an update on the status of any remaining Phase I and Phase II controversies in an effort to distribute whatever monies it could before terminating these proceedings and jurisdiction assumed by the Copyright Royalty Judges. The parties were required to notify the Office of the continued existence and the extent of Phase I and Phase II controversies and/or file any notices of settlement and motions seeking a full or further partial distribution of the royalty funds.

³ The Office also noted that the majority of IPG's Response was beyond the scope of the February 8, 2006, Order to which it was responding. See Order in above-captioned proceedings at 2-3 (June 26, 2006).

serve the responsive papers. In accordance with this Order, the Phase I Parties⁴ filed a joint opposition to IPG's motion for reconsideration basically stating that IPG had raised no new arguments which would warrant the Office's reversal of its decision. Similarly, IPG timely filed its reply.

On July 17, 2006, the Office also received from IPG a motion to compel production of agreements relating to settlements of devotional programming category funds. Devotional Claimants filed its opposition to the motion on August 2, 2006, and IPG filed a timely reply.

IPG's Motion for Reconsideration

Parties' Positions

IPG argues that the Office should reconsider its denial of IPG's motion to accept its late-filed Response for several reasons. First, IPG asserts that the Office contributed significantly to and was responsible in part for IPG's confusion surrounding the existence of and its obligation to respond to the aggregate of the September Orders. Motion at 3-6. Second, IPG asserts that the Office used the wrong criteria in evaluating IPG's motion to accept a late filing; specifically, the Office should have evaluated the motion under the same two-part test that it applies in evaluating a late-filed Notice of Intent to Participate. *Id.* at 6-15. Third, IPG contends that the Office "dramatically overstates 'IPG's Noncompliance with Office Rules.'" *Id.* at 15-20. Finally, IPG asserts that the Office exceeded its authority by issuing the September Orders to "the extent that the Office relies thereon to terminate proceedings." *Id.* at 20-22.

In their Joint Opposition, the Phase I Parties urge the Office to stand behind its June 26 Order in its entirety as the determinations made therein were justified. Opposition at 2-4. The Phase I Parties argue that IPG brings forth no new arguments justifying its disregard of the Office's rules and therefore provides no persuasive grounds for the Office to reverse its decision. *Id.* at 4. The Phase I Parties also point out that the Office was not required to nor should it have published in the Federal Register the September Orders. *Id.* at 4-5. Finally, the Phase I Parties emphasize the extent of the prejudice they have suffered as a result of IPG's conduct. *Id.* at 5.

In its reply, IPG asserts that the Phase I Parties' failure to address certain facts raised in its motion amounts to a concession to their veracity.

Discussion

⁴ The Phase I Parties are comprised of the representatives of the Phase I claimant categories, namely, Program Suppliers, Joint Sports Claimants, Public Television Claimants, National Association of Broadcasters and Broadcaster Claimants Group, the American Society of Composers, Authors and Publishers, Broadcast Music, Inc., SESAC, Inc., Canadian Claimants, National Public Radio and the Devotional Claimants.

Much of IPG's motion consists of arguments that were addressed by the Office in its June 26 Order. To that extent, such arguments will not be revisited here. Therefore, the Office sees no need to, and indeed will not, address the arguments made by IPG concerning the proper standard under which to evaluate its Motion to Accept its Late-Filed Response to the September Orders. These arguments, or variations thereof, were fully addressed in the June 26 Order. Similarly, the Office stands behind its findings regarding IPG's pattern of non-compliance with the Office's rules, especially when that pattern continues, as evidenced by IPG's service of the instant motion by priority mail.⁵

The Office does feel compelled, however, to briefly address IPG's two remaining arguments. We turn to them now.

IPG's Receipt of the September Orders

The Office now clarifies the record with regard to IPG's receipt of the September Orders. The Office served each of the September Orders on the parties in each of the above-captioned proceedings in accordance with the contact information as it existed on the respective service lists at the time of their issuance. In September 2005, the Office's records showed IPG as an active participant in only four of the seven proceedings, namely, the proceedings to determine the distribution of the 2000 satellite funds, the 2000 cable funds, the 2001 cable funds and the 2002 cable funds. IPG's current representative, however, was listed as such on only the service list with regard to the 2002 cable funds. Consequently, the current representative received Orders only for those proceedings for which she was listed as IPG's representative.⁶ The Office conveyed this information in a communication with IPG. See E-mail from Gina Giuffreda, Attorney Advisor, U.S. Copyright Office, to Lisa Katona Galaz, President, Independent Producers Group (February 10, 2006, 1:18:39 PM EST) (on file with the Office).

Subsequently, the Office, on its own, provided the remainder of the September Orders to IPG. First, once the Office discovered its error that IPG had erroneously been removed from the service lists for the proceedings to determine the distribution of the 1998 and 1999 cable funds as well as the 1999 satellite funds, it provided IPG with copies of the September Orders for those proceedings and afforded IPG an opportunity to respond to them. See Order in above-captioned proceedings at 3 (February 8, 2006). Soon thereafter, the Office, again on its own, provided to IPG the September Orders pertaining to the 2000 and 2001 cable funds. See E-mail from Gina Giuffreda, Attorney Advisor, U.S. Copyright Office, to Lisa Katona Galaz, President, Independent Producers Group (February 10, 2006, 1:18:39 PM EST) (on file with the Office) ("For your convenience, I am forwarding to you the September Orders issued by the Office

⁵ IPG also served its motion seeking to compel production of a settlement agreement among the Devotional Claimants by priority mail.

⁶ Actually, IPG's current representative received two of the September Orders. The Office has discovered that it also inadvertently served her with the Order regarding the distribution of the 2000 satellite funds even though Raul Galaz was listed as the sole representative on the service list.

regarding the distribution of the 2000 and 2001 cable royalties. Consequently, you will now have all of the Orders issued in September.”⁷). Moreover, in a further effort to assist IPG, the Office offered to, and did, provide to IPG a copy of the service lists for the four proceedings in which it had IPG listed as an active participant. See E-mail from Gina Giuffreda, Attorney Advisor, U.S. Copyright Office, to Lisa Katona Galaz, President, Independent Producers Group (December 21, 2005, 12:11:54 PM) (on file with the Office).

At no time did the Office state that certain of the September Orders did not exist. Indeed, such statement would contradict the plain language of subsequent orders. See Orders in above-captioned proceedings at 1 (dated December 8, 2005, and February 8, 2006) (“In September 2005, the Office issued Orders in each of the above-captioned distribution proceedings establishing a negotiation period . . .”). The Office answered all of IPG’s questions as clearly as possible. If IPG still had questions or believed that the Office was providing “misinformation,” then IPG could have requested copies of the Orders referenced in the December 8 and February 8 Orders and/or the dockets in each proceeding to ascertain what Orders had been issued by the Office. While the Office will assist a party where it can, it is the responsibility of a party appearing before the Office, and that party’s responsibility alone, to keep track of the proceedings in which it is an active participant and to determine which documents are needed in order to prosecute its claim and to request such documents from the Office.

Most, if not all, of IPG’s confusion could have been avoided had IPG simply updated its contact information in a timely manner as required by 37 C.F.R. § 351.44(f). IPG admits that it did not fully appreciate this fact.⁸ Motion at 6 n.8.

IPG also appears to be confused about a party’s responsibilities when participating in a CARP proceeding. IPG argues that many of the actions that the Office found objectionable in its June 26 Order were the result of IPG’s unawareness of its obligation to take certain actions. For instance, IPG states that it did not respond to the Office’s December 8 Order because it “was genuinely confused as to its obligation to respond.”⁹ Motion at 6. Similarly, it explains that it

⁷ IPG has not received the September Orders regarding the distribution of the 1996-1998 satellite royalty fees, as the only remaining controversies with respect to these funds existed in the Program Supplier category. IPG withdrew from this proceeding on May 10, 2004. Moreover, as noted earlier, this proceeding is closed as the Office has made a final distribution of these funds. See *supra* n.1. In any event, IPG was served with a copy of the motions seeking final distribution of these funds and had ample opportunity to object if it so chose. See Order in above-captioned proceedings (dated December 8, 2005).

⁸ When IPG did attempt to update its contact information, the letter was sent to the Office’s street address, which was not proper under the Office’s rules. See 37 C.F.R. § 251.1(c).

⁹ IPG states that it just recently discovered that its December 2005 filings did not have a “Proof of Service” attached to it. The Office finds this puzzling because it noted in the February 8 Order that IPG had not responded to the December 8 Order. Moreover, in a subsequent communication with IPG, the Office specifically stated that no certificate of service was attached to its initial comments. See E-mail from Gina Giuffreda, Attorney (continued...)

"satisfactorily" complied with the regulations governing proper service "after being alerted to the regulation's applicability." *Id.* at 18. The Office notes that it is the responsibility of those interested in participating in a CARP proceeding, and theirs alone, to familiarize themselves with the requirements for such participation. Therefore, despite IPG's arguments to the contrary, it is not the Office's responsibility to point out to the parties which regulations apply to a particular situation. Rather, parties are bound by all of the regulations at all times and may not vary from their requirements unless allowed to do so by the Office. See Order in above-captioned proceedings at 5 (June 26, 2006).

Office' Authority to Issue the September Orders

IPG's argument that the Office exceeded its authority by issuing the September Orders to terminate the above-captioned proceedings and failing to publish them in the **Federal Register** illustrates IPG's misapprehension of the Office's goal here and the CARP process in general.

The Library has the authority "[d]uring the pendency of any proceeding . . . to proceed to distribute any amounts that are not in controversy." 17 U.S.C. § 111(d)(4)(C). The distribution of funds under this provision is an administrative task, which the Library, through the Copyright Office, may undertake at any time during a proceeding, upon its own or the parties' motion, even before the institution of a formal CARP proceeding.¹⁰ Before making an initial distribution, the Office must ascertain the parties to a particular proceeding. The Office accomplishes this task by the solicitation of notices of intent to participate in a proceeding, which it publishes in the **Federal Register** pursuant to 37 C.F.R. § 251.45(a). Since the Office had taken this step in each of the above proceedings, thereby defining the universe of participants in each proceeding, it was not required to publish the September Orders in the **Federal Register**.

After considering IPG's motion, the Office finds that IPG has not presented any new arguments which would persuade the Office to reconsider its denial of IPG's late-filed Response.

IPG's Motion to Compel Production of Agreements

On December 6, 2005, the Office received a notice of partial settlement from Phase I Claimants and a motion for further distribution of 2000, 2001, and 2002 cable royalty fees. IPG

⁹ (...continued)

Advisor, U.S. Copyright Office, to Lisa Katona Galaz, President, Independent Producers Group (February 10, 2006, 1:18:39 PM EST) (on file with the Office) ("[O]ur records indicate that you provided no such certificate of service when you filed your comments initially or in response to the December 8 Order.")

¹⁰ IPG does not understand why the Office would "solicit the exact same information" in the September Orders as provided in the initial Notices of Intent to Participate instead of "feel[ing] satisfied to rely on the previously filed 'Notice of Intent' filings." Motion at 21. In an effort to encourage settlement, the Office afforded parties an opportunity to negotiate to see if previously outstanding controversies could be resolved and directed the parties to notify the Office of the outcome of their negotiations.

claims that "counsel for several unidentified parties purported to represent the aggregate of the Devotional Programming category" and joined the December 6 motion on behalf of all Devotional Claimants without informing IPG of the settlements or disclosing the terms. Motion at 2. IPG seeks access to the settlements negotiated on behalf of the Devotional Claimants to determine "whether IPG needs to challenge the Phase I Settlement, or whether IPG instead desires to accept the Phase I settlement and negotiate terms of its Phase II participants in the Devotional Programming category." *Id.* at 3.

Devotional Claimants dispute IPG's underlying contention that it had no knowledge of the terms of the settlement agreement. They contend that IPG and its current principal received the information it now seeks, i.e., the precise percentage amounts for which Devotional claims settled with other Phase I parties, by letter and email during confidential settlement negotiations in December 2005. They also maintain that IPG's reliance on a previous CARP order is misplaced since the order merely required the disclosure of the amount in the disputed fund and did not require the disclosure of the actual agreement. Moreover, Devotional Claimants maintain that IPG had timely notice of the settlement details and sufficient time to object to the settlements, noting that IPG did not file a timely objection upon receiving the relevant information. Devotional Claimants also take issue with IPG's implication that they had not disclosed the identities of their claimants and assert that it is IPG that has failed to provide this information to the detriment of those who have identified themselves.

Discussion

The distribution process relies on good faith negotiations by the claimants and their representatives. IPG had filed its notice of intent to participate in the distribution proceedings of the 2000, 2001 and 2002 royalty fees and, as a result, it has a reasonable expectation that other claimants will negotiate and consult with it concerning any settlement agreement among the Phase I claimants.

Both sides make factual representations about the facts surrounding the negotiations that purportedly did take place. However, the Office was not apprised of any these disputed actions during the pleading cycle established by the Office regarding the Notice of Partial Settlement and the Motion for Further Distribution. *See* Order in above-captioned proceedings (dated December 8, 2005). IPG had an opportunity to raise its concerns with the Office at that time, but it did not do so and cannot be allowed at this late date to undo the settlements that have been reached to date and upon which additional distributions are now based.

Nevertheless, IPG has a valid interest in this information for future negotiations concerning the distribution of the royalty fees among the Devotional claimants and the Office has withheld sufficient funds to address any outstanding controversies between IPG and these claimants. However, as indicated in the initial September orders, the Copyright Office will not be administering further proceedings in this matter. Its intent is only to consider one further distribution of the cable royalty fees in the open proceedings before terminating the proceedings

under the Copyright Arbitration Royalty Panels program and vesting authority for any further proceedings in the Copyright Royalty Judges, the entity created by Congress pursuant to the Copyright Royalty and Distribution Reform Act of 2004. Moreover, such questions, being a mixed question of fact and law, are more suited for resolution before the Copyright Royalty Judges.

Wherefore, **IT IS ORDERED** that IPG's Motion to Compel Production of Agreements relating to Settlements of Devotional Programming Category Funds **IS DENIED, WITHOUT PREJUDICE**. Additional motions concerning these proceedings will not be accepted by the Copyright Office and should be addressed in the future to the Copyright Royalty Judges.

Wherefore **IT IS FURTHER ORDERED** that IPG's Motion to Reconsider Denial of Motion for Acceptance of Late-Filed Response to the September Orders **IS DENIED**.

SO ORDERED.

Marybeth Peters,
Register of Copyrights.

BY:

Tanya M. Sandros
Tanya M. Sandros,
General Counsel.

DATED: April 3, 2007